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20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**

22 IN RE TEZOS SECURITIES LITIGATION

23
24 This document relates to:

25 ALL ACTIONS.

26 Master File No. 17-cv-06779-RS

27 **CLASS ACTION**

28 **AMENDED CONSOLIDATED
COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS**

DEMAND FOR JURY TRIAL

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1 Plaintiffs, individually and on behalf of all others similarly situated, allege the following based
 2 upon personal knowledge as to Plaintiffs and Plaintiffs' own acts, and upon information and belief as
 3 to all other allegations, based on investigation of counsel. This investigation included, *inter alia*, a
 4 review of public statements and disclosure materials prepared by Defendants Dynamic Ledger
 5 Solutions, Inc. ("DLS"), Tezos Stiftung ("Tezos Foundation"), Kathleen Breitman, Arthur Breitman
 6 (together with Kathleen Breitman, the "Breitmans"), Timothy Cook Draper ("Draper"), Draper
 7 Associates V Crypto LLC ("Draper Associates Crypto"), and Bitcoin Suisse AG ("Bitcoin Suisse");
 8 media reports; interviews; social media; and other information concerning Defendants. The
 9 investigation of the facts pertaining to this case is continuing. Plaintiffs believe that substantial
 10 evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for
 11 discovery.

12 **I. INTRODUCTION**

13 1. This is a securities class action on behalf of all investors who contributed digital
 14 currencies, including Bitcoin and/or Ethereum, to the Tezos blockchain "Initial Coin Offering"
 15 conducted in July 2017 ("Tezos ICO").

16 2. An ICO is similar to an initial public offering of stock, and is a fundraising mechanism
 17 by which the founders of a "blockchain" project sell "tokens" or "coins" in exchange for
 18 cryptocurrencies or for fiat currencies (such as U.S. Dollars). Over two weeks in July 2017,
 19 Defendants conducted an ICO for Tezos "tokens" (also referred to as "XTZ" or "tezzies") that raised
 20 the equivalent of \$232 million in Bitcoin and Ethereum (at July 2017 prices). In the first 15 hours
 21 alone, investors contributed \$109 million worth of Bitcoin and Ethereum.¹ Upon its completion, the
 22 Tezos ICO was the largest in history. Since the ICO, the contributed Bitcoin and Ethereum have
 23 continued to significantly appreciate, reaching a value of more than \$1.52 billion on January 7, 2018.²

24
 25 ¹ Wilma Woo, *Tim Draper UnCapped Tezos ICO Raises \$109M in 15 Hours*, BITCOINIST (July 2,
 2017), <http://coinmarketcap.com/drapers-uncapped-tezos-ico-raises-109m-15-hours/>.

26 ² *Cryptocurrency Market Capitalizations*, COINMARKETCAP,
 27 <https://coinmarketcap.com/historical/20180107/>. On January 7, 2018, the 65,681 Bitcoin raised in
 28 the Tezos ICO was valued at \$17,131.27 per Bitcoin, and the 361,122 Ethereum raised was valued
 at \$1,097.65 per Ethereum. The valuation is provided as of January 7, 2018 because that is the date

1 As of the date of filing of this Complaint, the currencies contributed to the Tezos ICO are worth
 2 approximately \$630 million.

3 3. Federal securities laws require any security that is offered or sold to be registered with
 4 the Securities and Exchange Commission (“SEC”). These laws are designed to protect the public by
 5 requiring various disclosures so that investors can better understand the security that is being offered
 6 or sold. Under section 2(a)(1) of the Securities Act of 1933 (“Securities Act”), a “security” is defined
 7 to include an “investment contract.”

8 4. Depending on the circumstances, the sale of tokens in an ICO may constitute a
 9 security. *See Investor Bulletin: Initial Coin Offerings*, U.S. SECURITIES AND EXCHANGE COMMISSION
 10 (July 25, 2017) (“in certain cases, the tokens or coins will be securities and may not be lawfully sold
 11 without registration with the SEC or pursuant to an exemption from registration”). According to the
 12 SEC, “issuers of distributed ledger or blockchain technology-based securities must register offers and
 13 sales of such securities unless a valid exemption applies.”³

14 5. In a number of speeches in the past few months, the SEC’s leadership has reinforced
 15 this view. In a speech entitled *Governance and Transparency at the Commission and in Our Markets*
 16 delivered on November 8, 2017 at the Institute on Securities Regulation in New York, the Chairman
 17 of the SEC, Jay Clayton, stated: “I have yet to see an ICO that doesn’t have a sufficient number of
 18 hallmarks of a security.” On January 22, 2018, in his opening remarks delivered at the Securities
 19 Regulation Institute in Washington, D.C., Chairman Clayton issued a further, stern warning to the
 20 legal and other professionals involved in ICOs, reminding them of the dangers in skirting the
 21 securities laws and the protections afforded to investors: “My first message is simple and a bit stern.
 22 Market professionals, especially gatekeepers, need to act responsibly and hold themselves to high
 23 standards. To be blunt, from what I have seen recently, particularly in the initial coin offering (‘ICO’)
 24 space, they can do better.” Chairman Clayton proceeded to state: “First, and most disturbing to me,
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26 on which the total cryptocurrency market capitalization peaked according to coinmarketcap.com.
 27 Bitcoin peaked at a value of over \$20,000 per Bitcoin on December 17, 2017, and Ethereum peaked
 28 at over \$1,400 per Ethereum on January 13, 2018.

³ SEC, *Press Release: SEC Issues Investigative Report Concluding DAO Tokens, a Digital Asset, Were Securities* (July 25, 2017), <https://www.sec.gov/news/press-release/2017-131>.

1 there are ICOs where the lawyers involved appear to be, on the one hand, assisting promoters in
 2 structuring offerings of products that have many of the key features of a securities offering, but call
 3 it an ‘ICO,’ which sounds pretty close to an ‘IPO.’ On the other hand, those lawyers claim the products
 4 are not securities, and the promoters proceed without compliance with the securities laws, which
 5 deprives investors of the substantive and procedural investor protection requirements of our securities
 6 law.”

7 6. In this case, Defendants attempted to avoid the reach of the U.S. securities laws by
 8 characterizing the Tezos ICO as the solicitation of “contributions,” or “donations,” as opposed to the
 9 solicitation of investments in securities. However, when assessing whether something is a security
 10 under the Securities Act, federal courts, including the Ninth Circuit Court of Appeals, have repeatedly
 11 stated that they will ignore the form of the transaction, and instead focus on the substance and
 12 economic reality of the transaction. Here, the Tezos ICO, and the promise of tokens offered and sold
 13 thereby, had all the hallmarks of a securities offering under the Securities Act and was therefore
 14 required to be registered with the SEC. No exemption to the registration requirement was available
 15 for Defendants’ offer and sale.

16 7. The Tezos ICO constituted in substance an offering and sale of Tezos tokens to
 17 investors in the Tezos ICO, who provided consideration (in the form of the Bitcoin and Ethereum
 18 cryptocurrencies) in exchange for a promise of Tezos tokens to be delivered at a later date. These
 19 participants advanced their consideration as an investment in a common enterprise: the development
 20 of the Tezos blockchain project. Defendants in turn used the consideration received as a source of
 21 capital to finance the development of the Tezos blockchain. Participants in the Tezos ICO reasonably
 22 expected to derive profits from their ownership of Tezos tokens, with Defendants themselves
 23 highlighting this profit motive. This profit motive is highlighted by the fact that, even though no
 24 Tezos tokens have been issued yet, there is already a functioning futures market in Tezos token IOUs,
 25 with participants effectively gambling on the future price of Tezos tokens if and when they are
 26 distributed.⁴ Finally, the development of the Tezos blockchain, and the profits that investors expected
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28 ⁴ *Tezos to BTC Exchange*, HitBTC <https://hitbtc.com/XTZ-to-BTC> (last visited Mar. 29, 2018).

1 to derive therefrom, were based entirely on the technical, managerial, and entrepreneurial efforts of
 2 Defendants and other third parties to be employed by Defendants.

3 8. The Tezos ICO was a financial boon for Defendants. DLS and its shareholders will
 4 be paid 8.5% of the contributions raised and 10% of the initial issuance of Tezos tokens (representing
 5 76,330,692.97 tokens), once the Tezos platform is launched and stable. The Tezos Foundation will
 6 also receive 76,330,692.97 tokens in the initial issuance of Tezos tokens.

7 9. Despite the enormous sums raised in the ICO, Defendants have claimed that they have
 8 no obligation to provide Tezos tokens to Plaintiffs and the Class. Defendants even claim the right to
 9 abandon the project at will and without recourse. It is situations exactly like this that the federal
 10 securities laws were enacted to prevent.

11 10. Here, in violation of Sections 5, 12(a)(1) and 15 of the Securities Act, Defendants
 12 offered and sold Tezos tokens without filing a registration statement with the SEC. Under Section
 13 12(a)(1), Plaintiffs and the Class are entitled to rescission of the transaction, receiving back their
 14 Bitcoin and Ethereum, with any corresponding appreciation in value of invested assets, or the
 15 equivalent in monetary damages as restitution.

16 **II. JURISDICTION AND VENUE**

17 11. The claims asserted herein arise under and pursuant to Sections 5, 12 and 15 of the
 18 Securities Act (15 U.S.C. §§ 77e, 77l, and 77o). This Court has jurisdiction over the subject matter
 19 of this action pursuant to 28 U.S.C. §§ 1331 and 1332(d), and Section 22 of the Securities Act (15
 20 U.S.C. § 77v).

21 12. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) and 15 U.S.C. § 77v
 22 because Defendants are found, and/or reside, and/or are inhabitants of, or transact business within this
 23 District. Venue is also proper in this District because many of the acts and transactions giving rise to
 24 the violations of law complained of herein occurred in this District.

25
 26 HitBTC is a cryptocurrency exchange accessible from anywhere in the world there is an internet
 27 connection. Though Defendants have not released tezzies yet, according to HitBTC, investors “are
 28 able to buy IOU[s] directly on [its] exchange and store them on [the investor’s] HitBTC account.
 As soon as tokens are released, [investors will] be able to trade, deposit/withdraw them[.]” *ICO*,
 HitBTC, <https://hitbtc.com/faq/ico> (last visited Mar. 29, 2018).

1 13. In connection with the acts, conduct and other wrongs alleged in this Complaint,
 2 Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce to
 3 offer and/or sell Tezos tokens through the Tezos ICO, including but not limited to mail, electronic
 4 mail, interstate phone communications, interstate travel, and/or internet service providers.

5 **III. PARTIES**

6 14. Lead Plaintiff Arman Anvari is a resident of Illinois, and invested 250 Ethereum in the
 7 Tezos ICO on July 8, 2017. He was promised delivery of 133,608.75 Tezos tokens upon the
 8 conclusion of the Tezos ICO and the launch of the Tezos network.

9 15. Plaintiff Pumaro LLC (“Pumaro”) is a Texas limited liability company, which invested
 10 1.9 Bitcoin in the Tezos ICO on July 1, 2017. Pumaro was promised delivery of 11,400 Tezos tokens
 11 upon the conclusion of the Tezos ICO and the launch of the Tezos network.

12 16. Defendant DLS is a Delaware corporation with its principal place of business in
 13 Mountain View, California, which was the home of Defendants Arthur Breitman and Kathleen
 14 Breitman at all relevant times. DLS is owned and controlled by Defendants Arthur Breitman,
 15 Kathleen Breitman, Timothy Cook Draper and Draper Associates Crypto. DLS claims to own all
 16 intellectual property in the Tezos project, including the source code of the Tezos cryptographic ledger,
 17 logos, and trademark applications associated with the name Tezos.

18 17. Defendant Tezos Foundation is a Swiss foundation with its principal place of business
 19 in Zug, Switzerland. The Tezos Foundation was created to hold the consideration raised from
 20 investors in the Tezos ICO. The Tezos Foundation claims to have contracts with DLS to acquire all
 21 rights to the Tezos project, and claims to have custody of all proceeds from the Tezos ICO.

22 18. The Court has specific personal jurisdiction over the Tezos Foundation based on its
 23 numerous contacts with the United States. Over the course of approximately two weeks in July 2017,
 24 the Tezos Foundation conducted the Tezos ICO that is the subject of this action. The “Tezos
 25 Overview” document⁵ stated that “[t]he Switzerland-based Tezos Foundation will oversee a
 26 fundraiser on July 1, 2017.” The Tezos Overview stated that the Tezos Foundation would “receive

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 28 ⁵ *Tezos Overview*, TEZOS (May 5, 2017), https://www.tezos.com/static/papers/Tezos_Overview.pdf.

1 and manage all contributions on a special website: <https://crowdfund.tezos.com> and through Bitcoin
 2 Suisse AG, a Swiss exchange that has successfully managed several fundraisers.” Based on the
 3 contributions received, the Tezos Foundation would then “recommend a token allocation” to
 4 investors. The tezos.com domain is hosted on a U.S. server located in Phoenix, Arizona, and the
 5 “crowdfund.tezos.com” website used by the Tezos Foundation is a sub-domain of tezos.com. By this
 6 means, the Tezos Foundation conducted an ICO and solicited virtual currency (Bitcoin and Ethereum)
 7 and fiat currency contributions from more than 30,000 investors, including numerous investors in the
 8 United States, such as Plaintiffs.

9 19. The Tezos Foundation also has/had at least one employee or agent located in the
 10 United States. In an official instructional video on how to participate in the Tezos ICO posted on the
 11 tezos.com website and on YouTube,⁶ an individual named Ross Kenyon introduced himself as a
 12 “community manager” for the Tezos Foundation. In an article published on July 13, 2017 in the
 13 French publication *Le Journal du Net* (JDN), entitled “Tezos, la blockchain décomplexée qui veut
 14 remplacer Ethereum,” Mr. Kenyon was quoted as the “spokesperson” for the Tezos Foundation.
 15 Based on Mr. Kenyon’s LinkedIn profile, Mr. Kenyon has at all relevant times been located in the
 16 United States.

17 20. The Tezos Foundation also owns and otherwise controls the website tezos.com, which
 18 is hosted in the U.S. According to domain registration information for tezos.com, the administrator
 19 of the tezos.com domain is the Tezos Foundation, and the administrator contact is identified as Johann
 20 Gevers, a director of the board of Tezos Foundation at the time of the ICO. The administrator address
 21 is listed as the address of the Tezos Foundation in Zug, Switzerland. Consistent with its ownership
 22 and/or control of the tezos.com domain, the Tezos Foundation used the website to conduct the Tezos
 23 ICO, and repeatedly directed investors to that website. For example, in an update posted on August
 24 10, 2017,⁷ the Tezos Foundation stated: “The Tezos project website (<https://tezos.com>) will be

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⁶ Tezos, *Tezos Fundraiser Video Walkthrough*, YOUTUBE (June 20, 2017),
 27 <https://www.youtube.com/watch?v=Uti8-1Y-Wkk>.

28 ⁷ *August Update*, TEZOS FOUNDATION (Aug. 10, 2017), <https://www.tezos.ch/august-update.html#august-update>.

1 updated soon – stay tuned.” In the same update, the Tezos Foundation expressly instructed investors
 2 to access a sub-domain of tezos.com, as follows: “If you haven’t done so already, please go to
 3 <https://check.tezos.com/> and make sure your contribution has been properly recorded.” As stated
 4 above, the Tezos Foundation “receive[d] and manage[d] all contributions” on the
 5 crowdfund.tezos.com website, which is another sub-domain of the tezos.com website.

6 21. Defendant Arthur Breitman is the primary developer behind the Tezos cryptographic
 7 ledger. At all times relevant to this Complaint, Arthur Breitman lived with his wife, Defendant
 8 Kathleen Breitman, at their home in Mountain View, California.

9 22. Defendant Kathleen Breitman is the Chief Executive Officer of DLS. In a July 2017
 10 interview, Mrs. Breitman stated that she “take[s] care of all the operational aspects of the Tezos
 11 blockchain. I deal with business partners, I deal with attorneys, I deal with our marketing group, all
 12 the non-technical things.”⁸

13 23. Defendant Draper is a venture capitalist who is the founder and managing partner of
 14 Draper Associates, a venture capital firm operating out of Menlo Park, California in San Mateo
 15 County. Defendant Draper both personally and through his company, Defendant Draper Associates
 16 Crypto, or both, has a substantial ownership interest in Defendant DLS.

17 24. Defendant Draper Associates Crypto is a Delaware limited liability company formed
 18 on May 10, 2017 with its principal place of business at 55 East 3rd Avenue, San Mateo California.
 19 Draper Associates Crypto is a primary shareholder in Defendant DLS.

20 25. Defendant Bitcoin Suisse is a financial services provider that was established in 2013
 21 and is headquartered in Zug, Switzerland. According to its press releases, the main activities of the
 22 company include brokerage, asset management, trading, ICO services and payment gateway services.
 23 Bitcoin Suisse acts as an asset manager on behalf of institutions, companies and private individuals,
 24 with a specific focus on digital/crypto assets and currencies.

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 26 _____
 27 ⁸ Around The Coin, *Fintech Podcast, Episode 138: Interview with Kathleen Breitman, CEO of*
 28 *Tezos, YOUTUBE* (June 16, 2017),
<https://www.youtube.com/watch?v=cDIgGYl5krA&feature=youtu.be>.

1 26. The Court has specific personal jurisdiction over Bitcoin Suisse based on its contacts
 2 with the United States. Bitcoin Suisse was involved in the promotion and/or offer and sale of tokens
 3 in the Tezos ICO. According to a statement published by Bitcoin Suisse on November 13, 2017,⁹
 4 “Bitcoin Suisse AG (BTCSAG) acted as a crypto-financial service provider and intermediary in
 5 connection with the Tezos Crowd Contribution earlier this year, providing services to both individual
 6 contributors as well as the Tezos Foundation itself.” Specifically, Bitcoin Suisse offered a way for
 7 putative investors to invest in the Tezos ICO other than from the tezos.com website, by acting as an
 8 intermediary and providing investors with virtual currency conversion services, and then contributing
 9 these virtual currencies to the Tezos ICO on behalf of the investors. According to a “Framework
 10 Agreement” that was published in English and made available on its website (*see*
 11 <https://www.bitcoinsuisse.ch/tezos-4/>), Bitcoin Suisse touted its ability to “handle[] the onboarding
 12 of individual contributors, and the reception and exchange of a wide variety of currencies, convert[]
 13 to the corresponding amount of Bitcoin (BTC), and hereafter handle[] the contribution to TZ on
 14 behalf the contributor.” Bitcoin Suisse also claimed that, “[i]f requested to do so, BTCSAG [Bitcoin
 15 Suisse] can also store the XTZ-tokens on behalf of individual contributors in our sandboxed
 16 environment …” Bitcoin Suisse also indicated that it accepted US dollars, and that it offered its
 17 services to U.S. clients, expressly stating that: “*N.B: For US-clients BTC-rate will be locked
 18 immediately upon reception of deposit.*” Thus, in connection with the Tezos ICO, Bitcoin Suisse
 19 provided a currency conversion facility through which U.S. investors could invest in the Tezos ICO.

20 27. In addition, Bitcoin Suisse fulfilled the vital role of a controlling co-signatory for the
 21 funds collected in the Tezos ICO. According to Bitcoin Suisse’s November 13, 2017 statement,
 22 “Since the conclusion of the Crowd Contribution, BTCSAG has continued to provide crypto-financial
 23 services to the Tezos Foundation, including acting as a mandatory co-signatory on all crypto-asset
 24 transactions.”

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⁹ *Statement concerning the Tezos Crowd Contribution and the Tezos Foundation* (Nov. 13, 2017),
 BITCOIN SUISSE AG, <https://www.bitcoinsuisse.ch/tezos-statement/>.

1 | IV. SUBSTANTIVE ALLEGATIONS

A. BLOCKCHAIN TECHNOLOGIES GENERALLY

3 28. As the SEC has explained, a “blockchain is an electronic distributed ledger or list of
4 entries – much like a stock ledger – that is maintained by various participants in a network of
5 computers. Blockchains use cryptography to process and verify transactions on the ledger, providing
6 comfort to users and potential users of the blockchain that entries are secure.”¹⁰ Well-known
7 examples of blockchain technology are the blockchains underlying the Bitcoin and Ethereum virtual
8 currencies. The Tezos project is also intended to be developed using blockchain technology.

9 29. A blockchain can be shared and accessed by anyone with appropriate permissions
10 using the same software protocol. For example, to operate the Bitcoin shared ledger, computers must
11 run the same version of the Bitcoin protocol. In this manner, blockchains are distributed or
12 decentralized because they are hosted and perpetuated by numerous “nodes” spread across
13 computers around the globe, including in the United States. Because the shared ledger is
14 decentralized in this manner, there is no central point of failure where the shared ledger can be
15 corrupted. Also, the blockchain ledger is not controlled or maintained by any single entity, but exists
16 simultaneously on computers all over the world.

17 30. By way of illustration, when any transaction is effected using the Bitcoin or Ethereum
18 blockchains, the transactions are recorded in tens of thousands of nodes throughout the world. The
19 distribution of Bitcoin and Ethereum nodes may be viewed at the following websites:
20 <https://bitnodes.earn.com/> and <https://www.ethernodes.org/network/1>. The United States hosts a
21 large number of the active nodes worldwide.

31. A blockchain records all transactions in the network in theoretically unchangeable, digitally recorded data packages called “blocks.” Each block contains a batch of records of transactions, including a timestamp and a reference to the previous block, linking the blocks together in a chain – hence the term “blockchain.” For a transaction to be valid on the blockchain, all network

²⁸ ¹⁰ *Investor Bulletin: Initial Coin Offerings*, U.S. SECURITIES AND EXCHANGE COMMISSION (July 25, 2017), https://www.sec.gov/oiea/investor-alerts-and-bulletins/ib_coinofferings.

1 participants must first reach a “distributed consensus” on the validity of transactions under review.
 2 Blockchains reach consensus by using the same cryptographic algorithm to verify each transaction
 3 submitted to the blockchain. For cryptocurrencies secured by a widely distributed blockchain
 4 network, any attempt to submit a false or malicious transaction would be extremely difficult, if not
 5 impossible, since a malicious actor must gain control of a majority of the nodes on the blockchain to
 6 achieve a malicious purpose. Once a transaction is validated on the blockchain, the transaction cannot
 7 be canceled, reversed, or altered in any way. Because the blockchain records and secures information
 8 for all transactions, a participant can see every transaction involving the currency all the way back to
 9 genesis.

10 32. Blockchain technologies and distributed ledgers may create and disseminate virtual
 11 “tokens” or “coins.” A token or coin may entitle its holders to certain rights related to an underlying
 12 venture, such as rights to profits, shares of assets, rights to use certain services provided by the issuer,
 13 and/or voting rights. The tokens or coins may also be traded on online exchanges, in exchange for
 14 virtual or fiat currencies. As the SEC has stated, based on these rights, “in certain cases, the tokens
 15 or coins will be securities and may not be lawfully sold without registration with the SEC or pursuant
 16 to an exemption from registration.”¹¹

17 **B. THE TEZOS PROJECT**

18 33. The Tezos project was conceived by Defendants Arthur and Kathleen Breitman as a
 19 new blockchain protocol that would compete with and supplant Ethereum. According to the
 20 tezos.com website (frequently asked questions):

21 Bitcoin, Ethereum and Tezos are all decentralized ledgers powered by a
 22 blockchain. Bitcoin was the first public blockchain and introduced the first
 23 truly decentralized form of electronic cash. Ethereum followed suit by
 24 including smart-contracts in its platform, allowing a greater range of
 25 application [*sic*] to be developed. Tezos takes this concept one step further
 26 by letting participants directly control the rules of the network. It is designed
 27 to evolve, so that the next generation of ideas doesn’t have to start over as
 28 a new blockchain.¹²

¹¹ *Id.*

¹² *FAQ*, TEZOS (May 8, 2017) <https://www.tezos.com/faq>.

1 34. In 2014, Arthur Breitman released a white paper (“Tezos White Paper”) describing the
 2 concept for the Tezos blockchain.¹³ The Tezos White Paper explains the purpose and technology
 3 behind the Tezos project, and sets forth the developers’ vision to launch a competitor to the Bitcoin
 4 and Ethereum blockchains that was intended to solve many of the problems faced by those early
 5 iterations of blockchain technology. The Tezos White Paper describes how the Tezos tokens allow
 6 their owners, such as Plaintiffs and the Class, to “vote” on amendments to the Tezos blockchain.

7 35. Apart from the vision for Tezos, the Tezos White Paper describes the mechanics of
 8 the Tezos ICO, the parties involved, and the intended uses for the Bitcoin and Ethereum to be
 9 contributed by investors.

10 36. In August 2015, Defendants Kathleen and Arthur Breitman formed Defendant DLS to
 11 hold the intellectual property for the Tezos project. At all relevant times, Kathleen Breitman has been
 12 the Chief Executive Officer, and Arthur Breitman has been the Chief Technology Officer of DLS.
 13 As DLS had no traditional office, the Breitmans listed their home in Mountain View, California as
 14 DLS’s formal headquarters.

15 37. Between September 2016 and March 2017, DLS and the Breitmans conducted a
 16 private pre-sale of the yet-to-be-issued Tezos tokens to three crypto-token focused hedge funds, and
 17 seven high net worth individuals. The Breitmans received \$612,000 in funding from these early
 18 investors.

19 38. On February 17, 2017, Arthur Breitman “announce[d] that Polychain Capital ha[d]
 20 added Tezos to its hedge fund by preordering Tezos tokens.” In hyping the potential value of Tezos
 21 tokens, he noted that:

22 Cryptocurrencies comprise a \$17B market. Bitcoin commands most of that
 23 market cap. But as new blockchain technologies emerge, many feel that the
 24 overall value of the market will grow astronomically. In fact, as Carlson-Wee
 25 [the founder of Polychain Capital] said in an interview with Forbes, it could
 26 one day be “in the trillions of dollars.” Since the field is still in its infancy, new
 27 advances are happening every day, and many are happening outside of the
 28

¹³ *Tezos White Paper*, TEZOS (AUG. 3, 2014),
https://www.tezos.com/static/papers/position_paper.pdf.

1 Bitcoin blockchain.¹⁴

2 39. During this time period, renowned technology venture capital firm Draper Associates,
 3 through Draper Associates Crypto, also made an equity investment of approximately \$1.5 million in
 4 return for a minority stake in DLS.¹⁵

5 **C. THE TEZOS ICO**

6 40. An ICO is a fundraising event in which an entity offers participants coins or tokens in
 7 exchange for consideration (often in the form of virtual currency such as Bitcoin and Ethereum, or
 8 fiat currency, such as U.S. Dollars).

9 41. ICOs are typically announced and promoted through public online channels, such as
 10 the popular forum bitcointalk.org. On May 3, 2017, shortly before the Tezos ICO, a user with the
 11 username “arthurb” posted on bitcointalk.org: “We’re keeping our nose to the grindstone. We’ll have
 12 an ANN[OUNCEMENT] on B[itcoin]T[alk] as soon as we’re ready to announce our ICO.”¹⁶ Upon
 13 information and belief, “arthurb” is the online moniker of Defendant Arthur Breitman.

14 42. The Tezos ICO was open to public investors from July 1, 2017 through July 14, 2017.

15 43. The Tezos ICO was “uncapped.” This means there was no limit on the number of
 16 investors who could participate, or the amount they could invest in the ICO.

17 44. The Tezos ICO utilized a tiered contribution structure that incentivized investors to
 18 contribute as early as possible by rewarding them with bonuses of additional tokens. Under the terms
 19 of the Tezos ICO, a contribution of one Bitcoin purchased five-thousand Tezos (5,000 XTZ), plus a
 20 time-dependent bonus. The time-dependent bonus started at 20%, meaning that an early contribution
 21 of one Bitcoin purchased 6,000 XTZ (a 1000 XTZ bonus). From 20% at the outset, the bonuses
 22 decreased progressively to 0% (15%, 10%, 5%, and then 0%) over four additional periods that lasted

24 ¹⁴ ArthurB, *Polychain hedge fund embraces Tezos*, MEDIUM (Feb. 17, 2017),
<https://medium.com/tezos/polychain-hedge-fund-embraces-tezos-9075603456fa>.

25 ¹⁵ Anna Irrera, et al., *Special Report: Backroom battle imperils \$230 million cryptocurrency*
 26 *venture*, REUTERS (Oct. 18, 2017), <https://www.reuters.com/article/us-bitcoin-funding-tezos-special-report/special-report-backroom-battle-imperils-230-million-cryptocurrency-venture-idUSKBN1CN35K>.

28 ¹⁶ Arthurb, *Tezos discussion*, BITCOIN FORUM (May 3, 2017),
<https://bitcointalk.org/index.php?topic=1775132.msg18860452#msg18860452>.

1 400 Bitcoin blocks each. (The average time between Bitcoin blocks is approximately 10 minutes, so
 2 each of these 400 Bitcoin periods lasted approximately 66 hours). Investors of Ethereum received
 3 Tezos tokens based on a corresponding tiered structure, except that the exchange rate fluctuated with
 4 the trading price of Ethereum.

5 45. Defendants' various roles in the Tezos ICO, and the mechanics of the Tezos ICO, are
 6 alleged in further detail below.

7 **D. DEFENDANTS' ROLES IN THE TEZOS ICO**

8 46. Defendants jointly conducted the Tezos ICO.

9 **1. DLS And The Tezos Foundation**

10 47. DLS is the developer of Tezos, and "owns all of the Tezos-related intellectual
 11 property, including the source code of the Tezos cryptographic ledger, logos, and trademark
 12 applications associated with the name Tezos, domain names, and goodwill arising from a set of a [sic]
 13 relationships with several contractors and potential customers in the financial technology market."¹⁷

14 48. In connection with the Tezos ICO, the Tezos Foundation was established in or around
 15 May 2017 as a Swiss non-profit (Stiftungen) in Zug, Switzerland to oversee the ICO and to "receive
 16 and manage all contributions." Based on the contributions received, the Tezos Foundation would
 17 then "recommend a token allocation in the Tezos genesis block" to be released by DLS to investors.¹⁸
 18 In connection with the Tezos ICO, the Tezos Foundation and DLS "negotiated a contractual
 19 agreement in which the Foundation will acquire DLS and release its IP under a free software license
 20 (MIT license). In the process, the Foundation will also acquire DLS' existing business relationships
 21 with contractors and potential customers, as well as its trademark applications and domain names."¹⁹
 22 In addition to collecting and managing contributions from the ICO, the Tezos Foundation is
 23 responsible for promoting the development and use of the Tezos blockchain.

24 49. Despite the purportedly separate legal status of the Tezos Foundation and DLS, the

25
 26 _____
 27 ¹⁷ *Transparency Memo*, TEZOS (Mar. 15, 2016) <https://www.tezos.com/dls>.

28 ¹⁸ *Tezos Overview*, *supra* at 10.

¹⁹ *Transparency Memo*, *supra*.

1 two entities are in fact closely affiliated, and jointly conducted the Tezos ICO. For example,
 2 according to the Tezos Overview, it was DLS and the Breitmans who established the Tezos
 3 Foundation: “Tezos’ founders thought it that it would be beneficial for the Tezos Network if a
 4 nonprofit foundation could guide its early steps and complement the decentralized nature of its
 5 governance model.” Also, “DLS advises the Foundation closely on technology.”²⁰ Further, as
 6 reported by *Reuters*, DLS controls the Tezos Foundation website (www.tezos.ch).²¹ Johann Gevers,
 7 one of the original directors on the Board of the Tezos Foundation, publicly stated that “[t]hey [the
 8 Breitmans] control the foundation’s domains, websites and email servers, so the foundation has no
 9 control or confidentiality in its own communications.”²²

10 **2. The Breitmans**

11 50. In addition to their roles running DLS, the Breitmans individually were responsible
 12 for promoting the Tezos ICO. For example, since at least mid-2016, the Breitmans have been touting
 13 the Tezos project on Reddit, a popular discussion forum for a variety of topics, including
 14 cryptocurrencies. Upon information and belief, Defendant Arthur Breitman posted to Reddit under
 15 the usernames “murbard” and “abtezos,” and Defendant Kathleen Breitman posted under the
 16 username “breitwoman.” Reddit allows the creation of subject-specific sub-forums known as “sub-
 17 Reddits.” Users submit discussion “threads” on sub-Reddits, in which other users post comments and
 18 responses. The sub-Reddit for Tezos, “r/Tezos,” was created by Defendant Arthur Breitman.²³

19 51. Throughout the months leading up to the Tezos ICO, murbard, abtezos, and
 20 breitwoman posted numerous times on r/Tezos. Their posts spanned a wide-range of subject matters
 21 and achieved a number of purposes, including: (i) the technology underlying Tezos; (ii) the Tezos
 22 ICO’s structure and process; (iii) answering numerous questions concerning the Tezos ICO and the

24 ²⁰ *Id.*

25 ²¹ Irrera, *supra*.

26 ²² *Id.*

27 ²³ Murbard, REDDIT (June 21, 2016), <https://www.reddit.com/r/tezos/> (listing user “murbard” as
 28 “founder”). The Tezos Foundation explicitly refers to this sub-Reddit in its August 10, 2017 update
 posted on its website, stating: “There are also two unofficial community forums:
<https://reddit.com/r/tezos> and <https://www.tezos.community>.”

1 technical underpinnings of the ICO system; (iv) touting the Tezos ICO and the Tezos project; and
 2 (v) systematically responding to critics who called into doubt Tezos's viability or the structure and
 3 process of the Tezos ICO. These posts showed that the Breitmans were intimately involved in the
 4 planning, marketing, and execution of the Tezos ICO.

5 52. For example, on June 27, 2016, a Reddit user began a discussion thread entitled "when
 6 is the crowdfunding?" Arthur Breitman, under the user name "abtezos," responded: "Looking at a
 7 crowdsale circa Q1 2017, but we have to iron out the details." In April, 2017, a user commenced a
 8 thread on the subreddit "r/EthTrader," entitled "Tezos will do an uncapped ICO. This turned me off,
 9 to me it seems they are greedy and abusing the hot ICO market. Their credibility is lost." "Murbard"
 10 responded: "Indeed we're not planning on having a cap. The structure will be highly similar to the
 11 Ethereum crowdsale. ... I think it's critical that two years from now we can look back and say: yes,
 12 everyone had a chance to participate, not just a few insiders who rushed in during a half hour period.
 13 Having a small insider base seems to have been very damaging to projects like NXT and we'd like to
 14 avoid that. Many people have told us the lack of a cap meant they wouldn't participate. Almost none
 15 of those people seemed interested in the details of our project and what we were building. I suppose
 16 they participate in many crowdsales and do not focus on the long term potential."

17 53. On the same thread, another user asked "what percentage will the Tezos team
 18 ultimately hold? How many additional rounds of fundraising do they have planned? What will the
 19 inflation rate estimated to be after Tezos goes live? Is there a vesting period for the initial
 20 investment?" "Breitwoman" responded, stating:

21 The founding team will hold 10% of the tokens, the Tezos Foundation
 22 (separate entity) will hold 10% as well, both vesting over 4 years. We will
 23 have nominal inflation of 5% annually.

24 We have no intention of running another crowdsale unless it's too low to
 25 fund development over the four years we want to budget the foundation.
 26 Even then, this choice would be left up to our network to decide. We built
 27 a product so we don't need 'fundraising' though we did sell a small amount
 28 of tokens at a discount over the crowdsale price (read: not a fixed % of a
 cap), to a small group of high net worth people and hedge funds with a focus
 on tokens.

54. On May 6, 2017, a Reddit user began a thread entitled "Red Flag," and stated "I

1 subscribed on Tezos website and got this message :- Thank you for subscribing Tezos 100 question
 2 mark way Brooklyn, New York 11221 When I googled the address it doesn't exist. What does it
 3 mean?" Defendant Kathleen Breitman, posting under the name "breitwoman," responded, "We didn't
 4 want to provide our personal address and we don't have an office to cite. And, to be very honest, I
 5 think your use of the phrase 'Red Flag' here is a bit unwarranted." Another user then asked, "[a]re
 6 you incorporated anywhere? Can't you cite your incorporation address?" "Murbard" responded,
 7 "[i]t's still our home address, we are a scrappy operation. But you gave me an idea and I put the
 8 address of the registrant in Delaware who can forward mail, should people decide they want to send
 9 us letters. Don't send flowers though."

10 55. On May 11, 2017, Defendant Kathleen Breitman held an "Ask Me Anything" (or
 11 "AMA") session on a chat service that was copied and pasted on the Reddit sub-forum of Ark, another
 12 cryptocurrency project.²⁴ During the AMA, Kathleen Breitman, posting as "breitwoman," stated that
 13 up to the point of the Tezos ICO, she had been the "one woman band" responsible for "promoting the
 14 protocol," but that she hoped the Tezos Foundation would take over these responsibilities "after the
 15 sale." "Breitwoman" also stated that she was US-based and "I don't have any plans to leave the US."

16 56. Upon information and belief, Defendants Arthur Breitman and DLS were also heavily
 17 involved in planning and executing the Tezos ICO from a technical and operational perspective,
 18 including by designing, constructing, and deploying the software underlying the ICO.

19 57. On July 5, 2017, four days into the Tezos ICO, a Reddit user posted in r/Tezos: "Tezos
 20 source[code] repository hasn't been touched in over 2 months... why? No development, no commits?"
 21 "Murbard" responded: "The fundraiser application took us two months of work, including an external
 22 security audit. During that time, there was [] only a bit of development on the alphanet branch"

23 58. During the Tezos ICO itself, Defendant Arthur Breitman was monitoring the ICO's
 24 progress, maintaining the Tezos computers tracking the progress of the ICO and the contribution
 25 amounts and addresses of ICO investors, and was on hand to deal with any problems that arose. For
 26 example, on the first night of the Tezos ICO, which began on Saturday, July 1, 2017 at 6AM UTC

27
 28 ²⁴ ArcEcosystem, *AMA with Tezos on ARK slack*, REDDIT (May 11, 2017),
https://www.reddit.com/r/ArkEcosystem/comments/6am0d6/ama_with_tezos_on_ark_slack/.

1 (or Friday, June 30, 2017 at 11PM PST), a Reddit user commenced a thread in r/Tezos, entitled “Why
 2 did some accounts get double XTZ?” “Murbard” responded, stating that “[t]he database crashed very
 3 early on and in the recovery we borked a few summaries. We’re rebuilding a clean database that will
 4 adjust this, apologies for the confusion this created.”

5 59. Several days later, Arthur Breitman posted as “murbard” in another thread started on
 6 July 4, 2017. Addressing the same “database crash[],” “murbard” stated:

7 For the curious, one of our machine’s role is to go through the Ethereum
 8 and Bitcoin blockchain and look for Tezos contributions. That machine
 9 threw a tantrum and chose to do it at the time where I finally got some sleep.
 10 I woke up in the middle of the night after sleeping through one or two phone
 11 calls and ad[d]ressed the issue with the team. It required a small patch and
 12 a restart of the machine.

13 It is the same machine that threw a bigger tantrum early morning on
 14 Saturday night, leading it to skip portions of the blockchain, which is why
 15 a few hundred people didn’t see confirmations for a long time. We’re still
 16 cleaning up the mess from Saturday morning, but we are being very slow
 17 about it, because we don’t want to risk disrupting the system while it’s
 18 running.

19 3. Bitcoin Suisse

20 60. According to a statement published by Bitcoin Suisse on November 13, 2017, “Bitcoin
 21 Suisse AG (BTCSAG) acted as a crypto-financial service provider and intermediary in connection
 22 with the Tezos Crowd Contribution earlier this year, providing services to both individual contributors
 23 as well as the Tezos Foundation itself.” In connection with the Tezos ICO, Bitcoin Suisse acted as
 24 an intermediary by providing virtual currency conversion services to investors and then handling the
 25 contribution to the Tezos ICO on behalf of the investors, including U.S. investors. In addition, Bitcoin
 26 Suisse acts as a controlling co-signatory for the funds collected under the Tezos ICO. According to
 27 Bitcoin Suisse’s November 13, 2017 statement, “[s]ince the conclusion of the Crowd Contribution,
 28 BTCSAG [Bitcoin Suisse] has continued to provide crypto-financial services to the Tezos
 Foundation, including acting as a mandatory co-signatory on all crypto-asset transactions.”

29 4. Timothy Draper And Draper Associates Crypto

30 61. Defendant Draper, principal of Draper Associates and Defendant Draper Associates
 31 Crypto, promoted the Tezos ICO.

1 62. On May 5, 2017, two months before launch of the Tezos ICO, *Reuters* announced that
 2 Draper was an early investor in the Tezos project. Draper “told *Reuters* in an interview he will for
 3 the first time participate in a so-called ‘initial coin offering’ (ICO) of Tezos slated later this month.”
 4 Draper stated: “The best thing I can do is lead by example Over time I actually feel that some of
 5 these tokens are going to improve the world, and I want to make sure those tokens get promoted as
 6 well. I think Tezos is one of those tokens.” As the *Reuters* article stated, “Draper...becomes the first
 7 prominent venture capitalist to openly embrace initial coin offerings. This would be a significant
 8 stamp of approval for this new financing mode of blockchain start-ups.”²⁵

9 63. Similarly, on July 7, 2017, *The Wall Street Journal* reported that Tezos was “helped
 10 by having one prominent backer: Tim Draper, a founder of the Silicon Valley venture-capital firm
 11 Draper Fisher Jurvetson. Mr. Draper’s small undisclosed personal investment in the firm, and his
 12 public pledge to buy into the initial coin offering significantly raised Tezos’s profile.”²⁶

13 64. Indeed, the Breitmans viewed Draper as a “partner.” In responding to a question on
 14 Reddit about Draper’s involvement in the Tezos ICO, Kathleen Breitman (posting under the username
 15 “breitwoman”) responded: “We offered Tim a small fraction of DLS so that his interest would be
 16 aligned with ours for at least the next four years. Bitcoin has DCG, Ethereum has Consensys ... we
 17 were in the market for a partner and champion and Tim was very responsive to our vision.”

18 65. In this manner, each of Defendants directly or indirectly sold or offered Tezos tokens
 19 to investors. In addition, each of Defendants was a necessary participant and a substantial factor in
 20 the Tezos ICO.

21 **E. THE MECHANICS OF THE TEZOS ICO**

22 66. To participate in an ICO, investors are generally required to transfer funds (often

23
 24
 25 ²⁵ Gertrude Chavez-Dreyfuss, *Exclusive: Billionaire investor Draper to participate in blockchain*
 26 *token sale for first time*, REUTERS (May 5, 2017), <https://www.reuters.com/article/us-tezos-blockchain-draper/exclusive-billionaire-investor-draper-to-participate-in-blockchain-token-sale-for-first-time-idUSKBN181250>.

27 ²⁶ Paul Vigna, *Forget an IPO, Coin Offerings Are New Road to Startup Riches*, THE WALL STREET
 28 JOURNAL (July 7, 2017), <https://www.wsj.com/articles/forget-an-ipo-coin-offerings-are-new-road-to-startup-riches-1499425200>.

1 cryptocurrencies) to the issuer's electronic address, online "wallet," or other account. After the
 2 completion of the ICO, the issuer distributes its unique tokens to the participants' unique address on
 3 the blockchain.

4 67. To better understand these steps and the mechanics by which investors transferred
 5 cryptocurrencies to Defendants under the Tezos ICO, it is useful to understand how cryptocurrencies
 6 work generally.

7 68. Cryptocurrencies (also known as digital currencies or virtual currencies) are a digital
 8 representation of value that can be digitally traded and function as: (1) a medium of exchange; and/or
 9 (2) a unit of account; and/or (3) a store of value. To date, digital currencies have not attained status
 10 as legal tender in any jurisdiction and have not been issued or guaranteed by any jurisdiction. A
 11 digital currency fulfills the above functions only by agreement within the community of users of the
 12 virtual currency, and is valuable only to the extent the market ascribes value to it. Thus, digital
 13 currencies attain valuations through market trades on various exchanges hosted throughout the globe.
 14 Virtual currency is distinguished from fiat currency, which is the coin and paper money of a country
 15 that has designated it as legal tender, and which circulates and is customarily used and accepted as a
 16 medium of exchange in the issuing country.²⁷

17 69. When transacting digital currencies, a digital currency holder receives digital currency
 18 using a "wallet." The wallet comes with a "public key," which is a unique identifier for the wallet
 19 and is known to the public. When a person sends cryptocurrency to that wallet, the person sends the
 20 digital currency to a digital address that is derived from that public key. This address is a single-use
 21 identifier that is automatically generated for each transaction.

22 70. In addition to the public key, each holder of cryptocurrency has a "private key," which
 23 is not to be shared with anyone else. The private key is needed to access any cryptocurrency that has
 24 been sent to the person's public address. When a person sends Bitcoin or any other type of digital
 25 currency, they are essentially signing off ownership of the coins to the recipient's wallet address. To
 26

27 28 ²⁷ Financial Action Task Force, *FATF Report, Virtual Currencies, Key Definitions and Potential AML/CFT Risks* (June 2014), <http://www.fatf-gafi.org/media/fatf/documents/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf>.

1 be able to spend those coins and unlock the funds, the private key stored in the recipient's wallet must
 2 match the public address to which the currency is assigned. In this fashion, a public address is similar
 3 to a mail box, and the private key functions as the key to the mailbox. While a mailman or anyone
 4 else can insert letters through the opening in the mailbox, only the person who has the unique private
 5 key can retrieve the contents of the mailbox.

6 71. In preparation for the Tezos ICO, DLS and the Tezos Foundation established a U.S.
 7 based website, www.tezos.com, as the mechanism for conducting the ICO. The IP addresses for all
 8 "tezos.com" webpages indicate that the website is hosted on a dedicated server in Phoenix, Arizona.

9 72. From the tezos.com website, Plaintiffs and the Class were instructed to manually enter
 10 "crowdfund.tezos.com" into their web browser. After accessing that web page, investors were
 11 instructed to register by first entering their email and then creating a password. Based on that
 12 information, the tezos.com website created a Tezos wallet for Plaintiffs and each Class member, a 15
 13 word "secret key" (private key) to uniquely identify each investor, as well as a public key to be used
 14 in interactions with the Tezos Foundation and other parties.

15 73. Plaintiffs and the Class then saved their wallets by downloading a PDF document to
 16 their computers that contained their private key and public key. The PDF document also identified
 17 the "Bitcoin deposit address" and a "Ethereum contract address" for the Tezos Foundation, which
 18 were the digital addresses to which investors were to send their Bitcoin and Ethereum contributions
 19 to the Tezos Foundation. For example, in the instructional video featuring Ross Kenyon, the address
 20 for Bitcoin contributions was 34XiEQ4qExTQtH38EPSNg43uhIBXrLbEDf, and the address for
 21 Ethereum contributions was: 0xb56d622DDF6Oec532B5f43B4Ff9B0e7b1FF92dB3. The actual
 22 contribution addresses were unique to each investor and based on that investor's public key.

23 74. Plaintiffs and the Class were then directed to a contributions web page, which was also
 24 part of the tezos.com website. There, they input the amount of Bitcoin or Ethereum they sought to
 25 invest, and the previously-notified Bitcoin or Ethereum deposit address to send their contribution.

26 75. As described above, the addresses where investors sent their Bitcoin or Ethereum
 27 contributions simply represent the digital identifying information for the Tezos Foundation's Bitcoin
 28 and Ethereum wallets. The wallets are not a physical location and the digital currency they contain

1 is not physically “stored” anywhere. By using these contribution addresses, investors were simply
 2 effecting a digital transaction which was digitally recorded as part of a block of information and then
 3 added to the Bitcoin and Ethereum blockchain ledger, respectively.

4 76. Because the Bitcoin and Ethereum blockchains are hosted and maintained by
 5 numerous computers throughout the globe, the ledgers recording the changes to the Tezos
 6 Foundation’s Bitcoin and Ethereum holdings simultaneously exist on all of these participating
 7 computers throughout the globe, including in the United States.

8 77. After Plaintiffs and the Class sent their Bitcoin or Ethereum to Defendants, they were
 9 able to check whether their currencies were received by going to another sub-domain of the tezos.com
 10 website: check.tezos.com. By entering their public key into the check.tezos.com web page, Plaintiffs
 11 and the Class could confirm that their Bitcoin and Ethereum were received by Defendants.

12 78. In the above manner, Plaintiffs and the Class used Defendants’ tezos.com website,
 13 which was hosted on a U.S. server, to send their Bitcoin and Ethereum contributions. These
 14 contributions were then digitally recorded in the Bitcoin and Ethereum blockchain ledgers maintained
 15 on computer systems and servers throughout the U.S. (as well as worldwide). Thus, Defendants
 16 incurred irrevocable liability within the U.S. to deliver the Tezos tokens to Plaintiffs and each member
 17 of the Class.

18 **F. THE RESULTS OF THE TEZOS ICO**

19 79. There were 30,317 investors in the Tezos ICO, who collectively contributed 65,681
 20 Bitcoin (62.5% of total contributions) and 361,122 Ethereum (37.5%). Based on these numbers, a
 21 total of 763.31 million Tezos tokens will be issued as part of the genesis block. Of this total, 607.49
 22 million Tezos tokens will be issued to ICO investors. A further 3.16 million Tezos will be created
 23 for early backers and contractors.

24 80. According to the Transparency Memo posted on tezos.com, if the Tezos blockchain
 25 launches and remains operational for three months, DLS will receive 10% of all Tezos tokens (76.3
 26 million tokens), issued over four years. The Tezos Foundation receives another 10%, also over four
 27 years. DLS shareholders are also entitled to receive 8.5% of the ICO proceeds in cash.

28 81. The remainder of funds raised in the Tezos ICO is purportedly the Tezos Foundation’s

1 property. While the Tezos Foundation appears to have a mandate to use these monies to support
 2 development of the Tezos blockchain, it appears to have no legal oversight or compulsion to do so.²⁸

3 G. THE TEZOS TOKENS ARE SECURITIES

4 82. Under Section 2(a)(1) of the Securities Act, a “security” is defined to include an
 5 “investment contract.” 15 U.S.C. § 77b(a)(1). An investment contract is “an investment of money
 6 in a common enterprise with profits to come solely from the efforts of others.” *S.E.C. v. W.J. Howey*
 7 *Co.*, 328 U.S. 293, 301 (1946). Specifically, a transaction qualifies as an investment contract and,
 8 thus, a security if it is (1) an investment; (2) in a common enterprise; (3) with a reasonable expectation
 9 of profits; (4) to be derived from the entrepreneurial or managerial efforts of others. *See United*
 10 *Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 852-53 (1975). This definition embodies a
 11 “flexible rather than a static principle, one that is capable of adaptation to meet the countless and
 12 variable schemes devised by those who seek the use of the money of others on the promise of profits,”
 13 and thereby “permits the fulfillment of the statutory purpose of compelling full and fair disclosure
 14 relative to the issuance of ‘the many types of instruments that in our commercial world fall within the
 15 ordinary concept of a security.’” *Howey*, 328 U.S. at 299. Accordingly, in analyzing whether
 16 something is a security, “form should be disregarded for substance,” and “the emphasis should be on
 17 economic realities underlying a transaction, and not on the name appended thereto.” *Forman*, 421
 18 U.S. at 849.

19 83. Notably, the SEC has already concluded that virtual coins substantially similar to those
 20 offered in the Tezos ICO – sold by an organization known as “The DAO” – are “securities and
 21 therefore subject to the federal securities laws.” As stated by the SEC, “issuers of distributed ledger

22
 23 ²⁸ Under Schweizerisches Zivilgesetzbuch (Swiss Civil Code), Art. 84 C. Augsicht (Supervision), a
 24 supervisory authority shall ensure that a foundation’s assets are used for its designated purposes.
 25 However, as of August 2017, no supervision authority was designated for the Tezos Foundation.
 26 According to the October 18, 2017 *Reuters* article (Irrera, *supra*), “Georg von Schnurbein, coauthor
 27 of a book on Swiss foundation governance, expressed surprise over cryptocurrency ventures like
 28 Tezos setting up not-for-profit foundations in Switzerland. ‘For me, the public interest is not clear,’ he said. While not illegal, he said, creating a foundation with the aim of allowing inventors to profit
 from a sale conflicted with its status as a not-for-profit, which is supposed to benefit the public. He
 said federal regulators eventually might prohibit it.”

1 or blockchain technology-based securities must register offers and sales of such securities unless a
 2 valid exemption applies.”²⁹

3 84. In finding that DAO tokens are securities, the SEC applied the *Howey* test for an
 4 “investment contract.” *First*, the SEC determined that investors in DAO tokens invested “money” by
 5 making their investments using Ethereum. *Second*, the SEC determined that investors who purchased
 6 DAO tokens were investing in a common enterprise with a reasonable expectation of profits. The
 7 promotional materials for DAO tokens informed investors that the objective of the project was to fund
 8 projects in exchange for a return on investments. Accordingly, the SEC concluded that “a reasonable
 9 investor would have been motivated, at least in part, by the prospect of profits on their investment of
 10 [Ethereum] in The DAO.” *Third*, the SEC determined that the investors’ profits were to be derived
 11 from the managerial efforts of others. Investors reasonably expected that the creators and promoters
 12 of DAO tokens would provide significant managerial efforts after the launch. The SEC also found
 13 that although DAO token holders were afforded voting rights, these rights were limited and did not
 14 provide them with meaningful control over the enterprise. Rather, “[b]y contract and in reality, DAO
 15 token holders relied on the significant managerial efforts provided by” the creators and promoters of
 16 DAO tokens.

17 85. In this case, the Tezos tokens have all the hallmarks of a security. In substance,
 18 participants in the Tezos ICO submitted valuable consideration in the form of Bitcoin and Ethereum
 19 virtual currencies in return for the Tezos tokens offered and sold by Defendants in the Tezos ICO.
 20 Defendants then used the consideration to finance the development of the Tezos blockchain protocol.
 21 Participants in turn relied entirely on Defendants’ expertise to complete the Tezos project and deliver
 22 profits to the participants.

23 **1. Participants In The Tezos ICO Made An Investment Of
 24 Money In A Common Enterprise**

25 86. Participants in the Tezos ICO used Bitcoin and Ethereum to invest in the Tezos ICO

27 29 *Press Release: SEC Issues Investigative Report Concluding DAO Tokens, a Digital Asset, Were
 28 Securities*, U.S. SECURITIES AND EXCHANGE COMMISSION (July 25, 2017),
 29 <https://www.sec.gov/news/press-release/2017-131>.

1 and to obtain Tezos tokens in exchange for this consideration. Investment of a virtual currency meets
 2 the first prong of *Howey*.

3 87. *First*, although Defendants have attempted to characterize the Bitcoin and Ethereum
 4 consideration submitted in the ICO as mere “contributions” or “donations,” Defendants made
 5 numerous statements in which they conceded that they were actually selling the Tezos tokens to
 6 investors as an investment.

7 88. For example, the Tezos Overview document on numerous occasions describes the
 8 Tezos ICO as a “fundraiser,” and as a “*crowdsale*.³⁰ Also, as recognized in the Tezos White Paper,
 9 “the token supply will be the number of tokens issued during the *crowdsale*”³¹

10 89. On February 17, 2017, Kathleen Breitman gave an interview with *Bitcoin Magazine*.
 11 Describing the investment in Tezos by Polychain Capital (a firm backed by prominent Silicon Valley
 12 investors such as Andreessen Horowitz) and the ICO process, she said “[w]e think this is significant
 13 because it represents a new business model. We created a product that was **purchased by VC**
 14 **investors** without the traditional equity investment model because of the **anticipated appreciation of**
 15 **our token.**³² (emphasis added).

16 90. On May 5, 2017, Kathleen Breitman similarly described that the intent behind the
 17 Tezos ICO was to “allow as many people who want to **buy into the crowdsale** over a two-week
 18 period.”³³ (emphasis added).

19 91. In a June 16, 2017 Fintech Podcast interview, Kathleen Breitman again represented
 20 that Defendants were “selling” the Tezos tokens: “**we’re selling**, rather the Foundation is
 21 recommending an allocation of tokens to the genesis block based on contributions to a Swiss non-
 22

23 ³⁰ *Tezos Overview*, *supra* at 2 and 10.

24 ³¹ *Tezos White Paper*, *supra* at 8.

25 ³² Rebecca Campbell, *Tezos Receives Funding for Smart Contact System from Polychain Capital’s*
 26 *Digital Currency Fund*, BITCOIN MAGAZINE (Feb. 17, 2017),
 27 <https://bitcoinmagazine.com/articles/tezos-receives-investment-smart-contact-system-polychain-captains-digital-currency-fund/>.

28 ³³ Chavez-Dreyfuss, *supra*.

1 profit. And there's a suggested allocation amount. So one bitcoin for 5000 Tezos tokens. And we're
 2 going *to sell them* over the course of, rather have them up for donation, for the course of two weeks.”³⁴
 3 (emphasis added).

4 92. Further, Defendant Draper characterized acquiring Tezos tokens as purchases rather
 5 than donations. When he was asked “how much he donated during the Tezos fundraiser, he replied
 6 via email, ‘You mean how much I bought? A lot.’”³⁵

7 93. On July 7, 2017, in the midst of the Tezos ICO, a user posted on r/Tezos, opining that
 8 Defendants mispriced the price of Tezos tokens. The user stated that in order to generate “the
 9 maximum amount of interest, hype, and attention” for Tezos, Defendants should lower the amount of
 10 available Tezos tokens by a factor of ten to increase the per unit price. According to the user, “[i]n
 11 two years, do you want to be telling people ‘One tezzie is worth 200 bucks’ or trying to explain that
 12 ‘One tezzie is worth 20 bucks, but keep in mind there are vastly more tezzies than ether.’? The first
 13 is obviously much better advertising.” In response, “murbard” stated, “I agree that there is such a
 14 psychological effect, but I think the current rate is close to a sweet spot. Too low and you’re not taken
 15 seriously, too high and it looks expensive.” Such discussions concerning pricing reflect that the Tezos
 16 ICO was a sale of an investment, rather than a donation.

17 94. On September 1, 2017, Kathleen Breitman further confirmed that Tezos tokens were
 18 being purchased for valuable consideration under the Tezos ICO. During an interview with famed
 19 angel investor Jason Calacanis (the “Calacanis Interview”), Mr. Calacanis asked: “I’m an investor,
 20 when we give \$2 million or \$200,000 or \$232 million for a company, it goes into the company, the
 21 company then deploys it to increase the product’s value in the world, then hopefully raise the stock
 22 price. [As to Tezos] … [i]s it worth a dollar each one or are they worth a hundred dollars each or a
 23 penny each?” Kathleen Breitman responded: “So basically the way we set the rate, it was
 24 denominated in Bitcoin, so it was 5000 tokens per Bitcoin, and of course Bitcoin as we mentioned

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26

27 ³⁴ Fintech Podcast, Episode 138, *supra*.

28 ³⁵ Irrera, *supra*.

1 earlier is quite volatile. So it depended when you contributed how much each thing is worth.”³⁶

2 95. *Second*, Defendants made clear that, like other types of investment, the Tezos tokens
 3 were really a form of capital to be raised from investors to finance the development of the Tezos
 4 project. On February 17-18, 2018, at the UCLA Blockchain Lab’s Cyber Days conference, Kathleen
 5 Breitman referred to the issuance of Tezos tokens and stated: “we can use this as an ***alternative***
 6 ***financing structure*** … [W]hen we were first looking at this … we thought in our worst case scenario
 7 if the foundation raises \$5 million tokens and it can’t even pay our developer salaries for 5 years, it
 8 might want to consider issuing more tokens at some point in the future in order to ***finance*** its activities.
 9 It looks less so like that’s going to be an issue.” (emphasis added).

10 96. On March 13-15, 2018, at a Money20/20 Asia event held in Singapore, Kathleen
 11 Breitman was asked: “traditional VCs [venture capital] provides vetting mechanism, within the
 12 context of an ICO, who provides that vetting? and is that vetting adequate?” Kathleen Breitman
 13 responded: “I think VCs are overrated, and what’s kind of interesting about software projects that can
 14 now ***raise capital*** across the world is that you can actually prove the software yourself … you don’t
 15 always get that opportunity with traditional VCs.” (emphasis added).

16 97. *Third*, as with other investments, participants in the Tezos ICO incurred a risk of loss
 17 on their investment. Investors faced (and still face) a host of potential risks, such as the risk that the
 18 software and related technologies underlying Tezos have technical shortcomings; the risk that the
 19 technology is superseded by or otherwise rendered obsolete by some other blockchain technology;
 20 the risk that the blockchain industry demonstrates a lack of interest with Tezos, or that the Tezos
 21 project is otherwise commercially unsuccessful; the risk that the underlying software and technology
 22 is attacked by hackers; the risk that infighting or other corporate governance disputes cause(s)
 23 abandonment of the Tezos project or no Tezos tokens to be created, resulting in the loss of all
 24 investments; and the risk that legal and regulatory developments impede the development of Tezos
 25 or the trading of its tokens. As evident in their communications and inquiries with Defendants,
 26

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³⁶ This Week In Startups, *Tezos Kathleen Breitman raises \$232m top ICO for new self-governing*
 28 *smart contract blockchain*, YouTube (Sept. 1, 2017)
<https://www.youtube.com/watch?v=rdRSUJkvmxM> at 19:30.

1 investors were concerned about these risks. If the contributions of Tezos investors were truly
2 charitable “donations,” investors would not have been concerned with these risks, or indeed, any
3 risks at all.

4 98. *Finally*, like the owners of shares in a company, the holders of Tezos tokens have the
5 right to vote. As the Tezos Overview explained, other blockchains suffered from not having an “on-
6 chain mechanism to seamlessly amend the rules governing its protocol and explicitly fund protocol
7 development.”³⁷ Defendants sought to address this problem by “creating governance rules for
8 stakeholders to approve of protocol upgrades that are then automatically deployed on the network.”³⁸
9 As a result, “stakeholders” – holders of Tezos tokens – have the power to “vote[] on protocol
10 amendments.”³⁹ Similarly, according to the Tezos White Paper, “Tezos begins with a seed protocol
11 defining a procedure for stakeholders to approve amendments to the protocol, including amendments
12 to the voting procedure itself.” The white paper goes on to explain how “amendments [to Tezos] are
13 adopted over election cycles … [which] require[] a certain quorum to be met.” “This is known as
14 ‘approval voting,’ a particularly robust voting procedure.”

15 99. These “voting” procedures are highly analogous to voting rights conferred on the
16 owners of equity shares (for example, for the election of boards of directors, and the approval of major
17 corporate transactions such as mergers and acquisitions), and confirm that Tezos tokens are in fact
18 “securities” in disguise.

2. Investors In The Tezos ICO Made Their Investment With A Reasonable Expectation Of Profits

21 100. Investors in the Tezos ICO, including Plaintiffs and the Class, made their investment
22 with a reasonable expectation of profits, as described below.

23 101. *First*, Defendants themselves recognized, both implicitly and explicitly, that investors
in the Tezos ICO have a reasonable expectation of profit. For example, the Tezos Overview document

26 | ³⁷ *Tezos Overview, supra.*

27 | ³⁸ *Id.*

³⁹ *Id.* at 4 (2.1 Governance).

1 acknowledges that each investor's interest is to have the value of the tokens increase – stating that the
 2 "central goal of the governance mechanism is to *protect the interest of each token holder*," which
 3 means "favoring decisions that tend toward *increasing the value of the tokens*."⁴⁰ (emphasis added).

4 102. The Tezos Foundation's website also implicitly acknowledges that investors are
 5 interested in seeing a return on their investment, stating that the depression of prices "is obviously
 6 not in the best interest of contributors"⁴¹

7 103. *Second*, as alleged in Section IV.G.3 below, the contributions received from investors
 8 were being pooled and managed by Defendants (and specifically, the Tezos Foundation) to fund
 9 projects that would increase the adoption of the Tezos blockchain, thereby increasing the value of the
 10 Tezos protocol and Tezos tokens.

11 104. *Third*, the early investors in Tezos (including some Defendants) openly stated that they
 12 were investing in Tezos in order to make a profit. Defendants in turn actively promoted the Tezos
 13 ICO by touting these early backers of Tezos – including three hedge funds and seven high net-worth
 14 individuals "many of whom were also LPs of the hedge funds,"⁴² thereby further stoking investors'
 15 expectations of profits.

16 105. For example, in her February 17, 2017 interview with *Bitcoin Magazine*, discussing
 17 the Polychain Capital investment in Tezos, Kathleen Breitman noted "the *anticipated appreciation*
 18 *of our token*."⁴³ (emphasis added).

19 106. On May 5, 2017, Draper's announcement of his investment in the Tezos project caused
 20 an explosion of investor enthusiasm for the Tezos project. On May 6, 2017, dozens of articles
 21 appeared promoting the Tezos project and extolling the value of Draper's financial backing. For
 22 example, bitcoinist.com observed that "[w]ith Draper as a backer, the community will no doubt be

23
 24
 25 ⁴⁰ *Id.* at 15 (6.1 Community Goals).

26 ⁴¹ *Diversifying the portfolio of the Tezos Foundation*, TEZOS (July 17, 2017)
<https://www.tezos.ch/diversifying-the-portfolio-of-the-tezos-foundation.html>.

27 ⁴² *Tezos Overview*, *supra* at 9 (3.5 Early Backers)

28 ⁴³ Campbell, *supra*.

1 eager to get on board this latest offering.”⁴⁴

2 107. *Bitcoin News* reported that:

3 ***Draper rightly believes that by participating in the ICO, he will be setting an***
 4 ***example for rest of the investor community*** to follow the new age of
 5 fundraising. These ICOs, also known as crowdsales are increasingly being
 6 used by the cryptocurrency platforms as a form of crowd fundraising ***where***
 7 ***any interested party can buy the tokens in return for the investment made***
 8 ***into the platform and reap benefits from its success.*** Draper’s participation in
 9 the ICO will not only encourage others to take part in it, but it will also increase
 10 the chances of successful completion of many crowdsales. Investors can also
 11 diversify their risk, keeping it to a minimum while having the tokens as
 12 collateral.⁴⁵

13 (emphasis added).

14 108. Arthur Breitman also commented in a Reddit post that “[t]he Tim Draper deal certainly
 15 is behind a lot of this hype.”⁴⁶

16 109. In October 2017, Draper acknowledged that he hopes to make himself and his
 17 investors “rich” from investing in Tezos.⁴⁷

18 110. *Fourth*, Defendants capitalized on the widely-reported success and profits realized by
 19 virtual currencies such as Bitcoin and Ethereum. As *Reuters* and *CNBC* observed, “[i]nterest in these
 20 deals has been stoked by the run-away performance of the original cyber currency, bitcoin.”⁴⁸

21 111. In response to questions about speculators investing in the Tezos ICO, Defendant

22 ⁴⁴ Wilma Woo, *Cheers Again, Tim: ‘World Improving’ Tezos ICO Gets Draper Backing*,
 23 BITCOINIST (May 6, 2017), <https://bitcoinist.com/cheers-tim-world-improving-tezos-ico-gets-draper-backing/>.

24 ⁴⁵ *Tim Draper to Back Tezos Cryptocurrency ICO*, NEWSBTC (May 6, 2017),
 25 <http://www.newsbtc.com/2017/05/06/tim-draper-tezos-ico/>.

26 ⁴⁶ Murbard, Comment to *Why is Tezos so hyped up?*, REDDIT (May 30, 2017),
 27 https://www.reddit.com/r/tezos/comments/6df26x/why_is_tezos_so_hyped_up/.

28 ⁴⁷ Cinerama, *Tim Draper: There Was Nothing Secretive About Our Purchase of Tezos* (Oct. 23,
 29 2017) BITCOIN ISLE, <https://www.bitcoinisle.com/2017/10/23/tim-draper-there-was-nothing-secretive-about-our-purchase-of-tezos/>.

⁴⁸ Gertrude Chavez-Dreyfuss, *supra*, and *Billionaire bitcoin enthusiast Tim Draper is backing a new cryptocurrency for the first time*, CNBC (May 5, 2017),
 28 <https://www.cnbc.com/2017/05/05/billionaire-investor-tim-draper-backs-new-cryptocurrency.html>.

1 Kathleen Breitman responded:

2 It's tough. ***We didn't do much marketing outside of the U.S. Well rather***
 3 ***Arthur and I are based in the U.S. and we talk about the technology in***
 4 ***mainstream U.S. press outlets and sometimes it's picked up in Asian outlets.***
 5 ***We mostly have just been evangelizing about the technology. But certainly***
 6 ***there are a lot of people who are interested in the more speculative aspects. I***
 7 ***think there's a lot of fervor and froth in the marketplace right now.*** That does
 make it a bit odd to launch something that's more community-based on some
 level when ***there's a lot of people who are just profit-seeking. I suppose I do***
worry but ultimately we're appealing to people's rational self-interest. So at
 the end of the day I hope that the proper incentives will align themselves.⁴⁹

8 (emphasis added).

9 112. On September 1, 2017, during the Calacanis Interview, when asked why investors
 10 contributed \$232 million (at July 2017 valuations), Kathleen Breitman stated: "Bear in mind that a
 11 lot of things changed with the price of bitcoin going up so high ... so the price of bitcoin skyrocketing
 12 over the last 6 to 8 months has basically changed a lot of the conversations." She added that "the
 13 narrative and what we saw with ethereum [skyrocketing in price] helped out with the pitch" to
 14 investors.⁵⁰ According to Kathleen Breitman, "[w]hen the white paper for Tezos was released in
 15 2014, no one gave a damn ... and we're very fortunate that the market timing worked out."⁵¹

16 113. Finally, in their inquiries and other statements, Tezos investors frankly acknowledged
 17 their profit motive and focused on the potential profits from investing in Tezos, and whether these
 18 tokens would be tradeable on an exchange.

19 114. During the May 11, 2017 AMA in the Reddit sub-forum r/Ark, a user asked: "Is there
 20 already some plan or future business relationship with merchants, exchanges or anything that Tezos
 21 could be used as a payment method? Anything you want to share already?" Kathleen Breitman, as
 22 "breitwoman" responded:

23 ***We've been talking to two exchanges for several months. I'm pretty confident***
 24 ***Tezos won't have trouble on that front.*** I have two partnerships in the works

25
 26 ⁴⁹ Alice Lloyd George, *Behind the scenes with Tezos, a new blockchain upstart*, TECHCRUNCH (July
 27 12, 2017), <https://techcrunch.com/2017/07/12/behind-the-scenes-with-tezos-a-new-blockchain-upstart/>.

28 ⁵⁰ Calacanis Interview, *supra*, at 25:40, 28:30.

⁵¹ *Id.* at 40:30.

that I'm excited about but shouldn't discuss yet. (emphasis added).

2 115. During the Calacanis Interview on September 1, 2017, Jason Calacanis asked a
3 question sent in by a listener: “How will people who have Tezos ... be able to liquidate them and get
4 cash if they want to?” Kathleen Breitman responded: “exchanges typically list these tokens, and there
5 are many pairings.” She noted ***“these things [Tezos tokens] are digital bearer assets.”***⁵²

6 116. On October 18, 2017, *Reuters* published an article about Tezos, in which it discussed
7 whether the Tezos tokens were securities.⁵³ *Reuters* interviewed Kevin Zhou, the co-founder of the
8 cryptocurrency trading fund, Galois Capital. Mr. Zhou said that he invested about five Bitcoin in
9 Tezos, which he considered overall one of the better ICOs. *Reuters* quoted Mr. Zhou as stating: ***“For***
10 ***me and for a lot of people this is an investment. We are looking for a return.”***

3. The Success Of The Tezos Project Requires The Technical, Entrepreneurial And Managerial Efforts Of Defendants And Others

13 117. Plaintiffs and the Class have entirely passive roles vis-à-vis the success of the Tezos
14 project. The success of the Tezos project, and the profits reasonably expected by the Class to be
15 derived from the project, are dependent solely on the entrepreneurial and managerial efforts of
16 Defendants.

17 118. From the outset, it was the Defendants who set up DLS to develop the software for the
18 Tezos project, who established the Tezos Foundation, and who chose the Foundation’s directors, and
19 all persons critical to Tezos’s success. Plaintiffs and the Class reasonably expected Defendants to
20 provide significant managerial efforts, to develop and complete the Tezos blockchain, to develop and
21 sustain a supportive network after its launch, and to secure an exchange through which the tokens
22 could be traded or liquidated. Through their conduct and marketing materials, Defendants repeatedly
23 represented that they would be relied upon to provide the significant managerial efforts required to
24 achieve these objectives and make Tezos a success.

27 | ⁵² *Id.* at 42:30, 43:40.

⁵³ *Irrera, supra* (emphasis added).

1 119. Tezos investors rely on the Tezos Foundation because it has “the responsibility of
 2 financing the development of the Tezos ecosystem.”⁵⁴ The Tezos Overview states that “[t]he
 3 Foundation will have the discretion to pay for services it believes will benefit the promotion of the
 4 Tezos protocol.”⁵⁵ The Tezos Overview proceeds to describe the various positions and roles for
 5 which the Tezos Foundation will hire employees to develop, complete, maintain, and promote the
 6 Tezos network, including employees in the fields of engineering, research, marketing, legal, business
 7 development, and education. The Tezos Overview identifies a set of “Development Goals,” involving
 8 security, scaling, privacy, usability, and features. The Tezos Overview states that it is the
 9 “development team [who] will pursue all five goals somewhat in parallel but not with the same
 10 priority.”⁵⁶

11 120. The Tezos Overview also identified a number of development projects, depending on
 12 the level of success of the Tezos ICO and the amount raised. For example, under the “moonshot”
 13 scenario (where \$10 to \$15 million was raised in the ICO), the Tezos Foundation would: “[h]ire
 14 talented teams of engineers and designers to build direct consumer applications through strategic
 15 acquisition of tech companies”; “[o]ffer competitive salaries to attract experts on formal verification
 16 to work exclusively on the protocol [and] [s]et up an institution a la IC3 in Europe”; “[s]ponsor an
 17 online magazine”; “[l]obby municipalities and local governments to use formally verified smart
 18 contracts as a form of binding legal contract”; and “[p]urchase a banking license and deploy the Tezos
 19 blockchain as a backbone for business operations.”⁵⁷ Under the “Mars-Shot” scenario (where the
 20 ICO raised more than \$20 million), the Tezos Foundation would “[d]eploy and silo several teams of
 21 engineers to build different candidates for upgrades”; “[s]ponsor a leading computer science
 22 department with endowed professorships and extensive grants to graduate students in the field of
 23 formal verification”; “[a]cquire mainstream print and TV media outlets to promote and defend the
 24

25 ⁵⁴ ArthurB, *The Path Forward*, MEDIUM (Oct. 18, 2017), <https://medium.com/@arthurb/the-path-forward-eb2e6f63be67> (emphasis added).

26 ⁵⁵ *Tezos Overview*, *supra*, at 13.

27 ⁵⁶ *Id.* at 16, Development Goals.

28 ⁵⁷ *Id.* at 18-19.

1 use of cryptographic ledger in society”; “[f]und efforts to digitize and map transaction logic from
 2 traditional legal prose to a Tezos language”; “[r]un a development school with emphasis on functional
 3 programming and safe smart contract construction”; and “[n]egotiate with a small nation-state the
 4 recognition of Tezos as one of their official state currencies.”

5 121. Consistent with these objectives, on August 10, 2017, after the success of the Tezos
 6 ICO, the Tezos Foundation announced a “commitment of \$50 million in funding to companies
 7 looking to build on the Tezos platform.”

8 122. Tezos investors also rely on the expertise of DLS and the Breitmans, who were and
 9 will be critical to developing and completing the Tezos network, monitoring operation of the network,
 10 providing network security, promoting the network, safeguarding investor funds, and developing
 11 Tezos software. Indeed, the Breitmans have repeatedly represented to Plaintiffs and the Class that
 12 they are experts in blockchain technology and Tezos, that they are busy working on the development
 13 of the project, and that the personal efforts of Arthur Breitman are critical to the success of the Tezos
 14 project. Therefore, investors reasonably expected that, without the coding acumen and vision of
 15 Arthur Breitman and his team, the Tezos product could not succeed.

16 123. For example, in July 2017, Arthur Breitman posted on Reddit that no development had
 17 been done on the Tezos blockchain because “the fundraiser application took us two months of
 18 work.”⁵⁸

19 124. In an October 18, 2017 article on medium.com, Arthur Breitman claimed that:

20 ***The momentum we had prior to the fundraiser has slowed despite the***
resources now available for supporting the project. Some development has
 21 continued and we have ***personally been working*** to create strong relationships
 22 with successful entrepreneurs looking to build with Tezos. Unfortunately,
other aspects have fallen behind, such as:

23 **•** Creating online resources for contributors and developers to learn more
 24 about Tezos.

25
 26 _____
 27 ⁵⁸ Murbard, *Tezos source repository hasn't been touched in over 2 months...why? No development, no commits ?,* REDDIT (July 30, 2017),
 28 https://www.reddit.com/r/tezos/comments/6lf03x/tezos_source_repository_hasnt_been_touched_in/.

- 1 • *Scaling up the development team.*
- 2 • Articulating our vision for the project more clearly through a series of
- 3 explanatory blog posts, as we used to produce.
- 4 • Engaging with the community of Tezos contributors and makers, and
- 5 helping them in their endeavors.⁵⁹

6 (emphasis added).

7 125. In this manner, Plaintiffs and the Class rely entirely on the technical, managerial and
8 entrepreneurial expertise and efforts of Defendants and employees hired by them.

9 **4. The Contribution Terms Do Not Alter The Substance And
Economic Reality Of The Tezos ICO**

10 126. On a separate website, tezos.ch, Defendants posted a document called “Contribution
11 Terms.” Through the Contribution Terms document, Defendants attempted to disclaim any
12 obligations whatsoever to Plaintiffs and the Class. This document stated that invested Bitcoin and
13 Ethereum constitute “a non-refundable donation” and not an “investment.” The Contribution Terms
14 stated that Defendants have no obligation to ever actually allocate Tezos tokens to Plaintiffs and the
15 Class, and that the project “could be fully or partially abandoned” without recourse whatsoever. Thus,
16 according to the document, Plaintiffs and the Class could receive absolutely nothing in exchange for
17 the \$232 million (at July 2017 prices) in Bitcoin and Ethereum invested in the Tezos ICO.

18 127. The Contribution Terms and its characterizations do not change the substance or
19 economic reality of the Tezos ICO, which was an offer and sale of a security. Further, the
20 Contribution Terms were not posted on the tezos.com website, which participants in the Tezos ICO
21 had to access to make their investments. Instead, the Contribution Terms were posted on a separate
22 website, tezos.ch, which was not referenced on the tezos.com website; were not incorporated by
23 reference therein; were not displayed to investors accessing the Tezos ICO website; and were not
24 otherwise made a part of the Tezos ICO contribution process. As such, the Contribution Terms
25 provide no contractual or other legal basis to govern the relations between Defendants, on the one
26 hand, and Plaintiffs and the Class, on the other.

27
28 ⁵⁹ ArthurB, *The Path Forward*, *supra*.

H. EVENTS SUBSEQUENT TO THE ICO

2 128. Between August and October 2017, few updates were given on the Tezos project.
3 Then on October 18, 2017, it was revealed that infighting amongst the Defendants and the directors
4 of the Tezos Foundation threatened to derail the Tezos project.

5 129. On October 18, 2017, the Breitmans posted an open letter on www.medium.com. The
6 letter explained that the Tezos ledger was still in its alpha stage, and would not be rolled out before
7 February 2018 or “when it’s ready.” Moreover, the project was experiencing serious corporate
8 governance problems. The Breitmans noted that “despite the resources,” Tezos has been unable to
9 “scale the development team,” (*i.e.*, recruit people to the project). The letter described material
10 disputes between the Breitmans and the Tezos Foundation’s President, Johann Gevers, that were
11 endangering the viability of the Tezos project.⁶⁰

12 | V. CLASS ALLEGATIONS

13 130. Plaintiffs bring this action as a class action pursuant to Rules 23(a) and 23(b)(3) of the
14 Federal Rules of Civil Procedure on behalf of the following Class of persons:

15 All persons and entities who, directly or indirectly through an intermediary,
16 contributed Bitcoin and/or Ethereum to the Tezos Initial Coin Offering
conducted in July 2017.

17 Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity
18 related to or affiliated with any Defendant.

19 131. Plaintiffs reserve the right to amend the Class definition if further investigation and/or
20 discovery indicate that the Class definition should be narrowed, expanded, or otherwise modified.

132. Upon information and belief, there were 30,317 investors in the Tezos ICO who
contributed Bitcoin and/or Ethereum. The number of individuals and entities who comprise the Class
are so numerous that joinder of all such persons is impracticable and the disposition of their claims
in a class action, rather than in individual actions, will benefit both the parties and the courts. Class
members may be identified from records maintained by Defendants, and may be notified of the
pendency of this action by mail or electronic mail using the form of notice similar to that customarily

28 | ⁶⁰Id.

1 used in securities class actions.

2 133. Plaintiffs' claims are typical of the claims of the other members of the Class. All
 3 members of the Class have been and/or continue to be similarly affected by Defendants' wrongful
 4 conduct as complained of herein, in violation of federal law. Plaintiffs are unaware of any interests
 5 that conflict with or are antagonistic to the interests of the Class.

6 134. Plaintiffs will fairly and adequately protect the Class members' interests and have
 7 retained counsel competent and experienced in securities class actions and complex litigation.
 8 Plaintiffs and their counsel will adequately and vigorously litigate this class action, and Lead Plaintiff
 9 is aware of his duties and responsibilities to the Class.

10 135. Defendants have acted with respect to the Class in a manner generally applicable to
 11 each Class member. Common questions of law and fact exist as to all Class members and
 12 predominate over any questions affecting individual Class members. The questions of law and fact
 13 common to the Class include, *inter alia*:

- 14 a. Whether the offer of the Tezos tokens through the Tezos ICO constituted the sale
 15 or offer of "securities";
- 16 b. Whether Defendants were required to file a registration statement for the Tezos
 17 ICO;
- 18 c. Whether Defendants are "issuers," "underwriters" and/or "necessary participants"
 19 in the Tezos securities offering;
- 20 d. Whether Defendants Arthur Breitman, Kathleen Breitman, Draper and Draper
 21 Associates Crypto are "control persons" under the Securities Act;
- 22 e. Whether the federal securities laws were violated by Defendants' acts and
 23 omissions as alleged herein; and
- 24 f. Whether Plaintiffs and the Class are entitled to rescission, damages, or restitution,
 25 and the proper calculation and amount of those damages.

26 136. A class action is superior to all other available methods for the fair and efficient
 27 adjudication of this controversy since joinder of all Class members is impracticable. Furthermore, as
 28 the injury and/or damages suffered by individual Class members may be relatively small, the expense

1 and burden of individual litigation makes it impossible as a practical matter for Class members to
2 individually redress the wrongs done to them. There will be no difficulty in managing this action as
3 a class action.

4 137. Defendants have acted on grounds generally applicable to the entire Class with respect
5 to the matters complained of herein, thereby making appropriate the relief sought herein with respect
6 to the Class as a whole.

7 | VI. CAUSES OF ACTION

FIRST COUNT

**VIOLATION OF SECTIONS 5 AND 12(a)(1) OF THE SECURITIES ACT
(Against All Defendants)**

138. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
paragraphs of this Complaint.

13 139. This Count is brought pursuant to Sections 5 and 12(a)(1) of the Securities Act, 15
14 U.S.C. §§ 77e and 77l(a)(1), on behalf of the Class, against Defendants DLS, the Tezos Foundation,
15 the Breitmans, Timothy Draper, Draper Associates Crypto and Bitcoin Suisse.

140. Tezos tokens are securities within the meaning of Section 2(a)(1) of the Securities Act,
15 U.S.C. § 77b(a)(1).

141. Defendants, and each of them, promoted, offered and/or sold securities through the
18 Tezos ICO.

20 142. Defendants, and each of them, are issuers, underwriters, and/or necessary participants
of/in the Tezos ICO.

22 143. No Defendant or other person filed with the SEC a registration statement for the offer
23 and sale of Tezos securities through the Tezos ICO, no registration statement was in effect at the time
of the Tezos ICO, and no exemption to the registration requirement was available.

25 144. Defendants, and each of them, used the instrumentalities of interstate commerce in
connection with the offer and sale of Tezos securities.

SECOND COUNT

**VIOLATION OF SECTION 15 OF THE SECURITIES ACT
(Against Arthur Breitman, Kathleen Breitman,
Timothy Draper and Draper Associates Crypto)**

4 145. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
5 paragraphs of this Complaint, except any allegation of fraud, recklessness or intentional misconduct.

6 146. This Count is asserted against Defendants Arthur Breitman, Kathleen Breitman,
7 Timothy Draper and Draper Associates Crypto (collectively, the “Control Person Defendants”) under
8 Section 15 of the Securities Act, 15 U.S.C. § 77o.

9 147. The Control Person Defendants, by virtue of their offices, stock ownership, agency,
10 agreements or understandings, and specific acts were, at the time of the wrongs alleged herein, and
11 as set forth herein, controlling persons within the meaning of Section 15 of the Securities Act. The
12 Control Person Defendants, and each of them, had the power and influence and exercised the same to
13 cause the unlawful offer and sale of Tezos securities as described herein.

14 148. The Control Person Defendants, separately or together, possess, directly or indirectly,
15 the power to direct or cause the direction of the management and policies of DLS and/or the Tezos
16 Foundation, through the ownership of voting securities, by contract, subscription agreement, or
17 otherwise.

18 149. The Control Person Defendants, separately or together, have sufficient influence to
19 have caused DLS and/or the Tezos Foundation to submit a registration statement.

150. The Control Person Defendants, separately or together, jointly participated in, and/or
aided and abetted, DLS and/or the Tezos Foundation's failure to register the Tezos ICO.

22 151. By virtue of the conduct alleged herein, the Control Person Defendants are liable for
23 the wrongful conduct complained of herein and are liable to Plaintiffs and the Class for rescission
24 and/or damages suffered.

25 //

26 //

27 //

1 **VII. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs and the Class pray for relief and judgment as follows:

3 A. Declaring that this action is properly maintainable as a class action under Rule 23 of
 4 the Federal Rules of Civil Procedure, and certifying Plaintiffs as the Class representatives and their
 5 counsel as Counsel for the Class;

6 B. Declaring that Defendants offered and sold unregistered securities in violation of
 7 Sections 5, 12(a)(1) and 15 of the Securities Act;

8 C. Awarding Plaintiffs and the members of the Class the remedy of rescission of their
 9 investment in the Tezos ICO including appreciation of the contributed Bitcoin and Ethereum (which
 10 includes forks of Bitcoin occurring after July 14, 2017), and/or awarding compensatory damages in
 11 favor of Plaintiffs and the Class against all Defendants, jointly and severally, for all damages sustained
 12 as a result of Defendants' wrongdoing, in an amount to be proven at trial, including pre-judgment and
 13 post-judgment interest thereon;

14 D. Requiring an accounting of all remaining assets and funds raised by Defendants under
 15 the Tezos ICO;

16 E. Imposing a constructive trust over the assets and funds raised by Defendants under the
 17 Tezos ICO;

18 F. Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this
 19 action, including Plaintiffs' attorneys' fees and expert fees; and

20 G. Granting such other and further relief as this Court may deem just and proper.

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1 **VIII. JURY TRIAL DEMAND**

2 Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs hereby demand a trial by jury in this action of all
3 issues so triable.

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5 Date: November 12, 2018

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59 *Lead Counsel for Court-Appointed Lead*
60 *Plaintiff and the Class*

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CERTIFICATION OF ARMAN ANVARI

I, Arman Anvari, certify as follows:

1. I have reviewed the accompanying Consolidated Class Action Complaint against Dynamic Ledger Solutions, Inc., Tezos Stiftung, Kathleen Breitman, Arthur Breitman, Timothy Cook Draper, Draper Associates and Bitcoin Suisse AG, and authorize its filing.

2. I did not purchase the security that is the subject of this action at the direction of counsel or in order to participate in this private action or any other litigation under the securities laws of the United States.

3. I am willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary.

4. My transactions in Tezos tokens, which are the subject of this action are as follows:

Contribution	Contribution Date	Amount of Tezos Promised	Price Per Tezos Token
250 ETH	July 8, 2017	133,608.75	0.00187 ETH

5. I have not sought to serve, and have not served, as a representative party for a class action filed under the federal securities laws within the last three years.

6. I will not, either directly or indirectly, accept any payment for serving as a representative party on behalf of the class beyond my *pro rata* share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class, as ordered or approved by the Court.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 3rd day of April 2018 in Chicago, Illinois.



ARMAN ANVARI